

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

HENRY GILMORE, #00318-045,	)	C/A No. 2:09-3278 DCN
	)	
Plaintiff,	)	
	)	
vs.	)	<b><u>ORDER</u></b>
	)	
DEPARTMENT OF DEFENSE, BUREAU OF	)	
ARMY; MRS. ROBERTS, CASE WORKER;	)	
MR. KING, CASE WORKER; MRS. WILLIAMS,	)	
COUNSELOR; MR. SIMON, RECORDS;	)	
JULIE J. ARMSTRONG, CLERK OF COURT,	)	
	)	
Defendants.	)	

The above referenced case is before this court upon the magistrate judge's recommendation that the plaintiff's motion to proceed *in forma pauperis* should be denied. The magistrate judge further recommends that plaintiff be given twenty-one (21) days from the date of the court's order on the motion for in forma pauperis to pay the full \$350 filing fee. It is further recommended that if the plaintiff fails to pay the full \$350 filing fee within this time period, or requests an extension of time to do so, that the complaint be dismissed without prejudice and without issuance and service of process.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those

objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984 ).<sup>1</sup> Objections to the magistrate judge's report and recommendation were timely filed on January 11, 2010.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **AFFIRMED**, and the plaintiff's motion for *in forma pauperis* is **DENIED**.

**IT IS FURTHER ORDERED** that plaintiff is given twenty-one (21) days from the date of this order to pay the full \$350 filing fee, so that this matter can be returned to the magistrate judge to conduct a review of the plaintiff's complaint.

**IT IS FURTHER ORDERED** that if plaintiff fails to pay the full \$350 filing fee within this time period, or seeks an extension of time to do so, by a self-executing judgment or by additional order of this court, the complaint shall be dismissed without prejudice and without issuance and service of process.

**AND IT IS SO ORDERED.**



David C. Norton  
Chief United States District Judge

Charleston, South Carolina  
January 14, 2010

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure

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<sup>1</sup>In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.